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May 16, 2006

AGENDA ITEM 7-A

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION
COMMITTEE**

I. SUBJECT: AB 2351 (Maze) - As Amended April 17, 2006

Retirement: Elected Public Officers

II. PROGRAM: Legislation

III. RECOMMENDATION: Neutral

This bill is consistent with our handling of payroll reporting and our service credit provisions, and would not have a significant administrative impact on our system.

IV. ANALYSIS:

This bill would prohibit a governing body of a city or county from granting or paying for contributions for service credit for an elected officer or member of a board of supervisors for time that he or she did not serve in the elected office.

Background

Membership

Beginning in 1937, a sequence of legislative amendments provided that certain elected officials of the state or of contracting agencies have been eligible for membership in CalPERS on an optional (individual choice) basis, and referred to as "optional members." Over time, officers of the Senate or Assembly elected by a vote of the members, officers of cities or counties appointed for a fixed term of office, and city attorneys also became eligible for optional membership in CalPERS.

Senate Bill 53 (Chapter 53, Russell, 1993), and subsequent legislation, restricted the positions eligible for optional membership as "elective officers", even excluding some appointed positions which had not previously been eligible for optional membership. With exceptions for officials in office as each new law change became effective, the result of these changes is that under current law,

only persons serving on a city council and county board of supervisors and persons elected or appointed for a fixed term to an individual position (city clerk, county sheriff, etc.) can elect membership in CalPERS, and then only if their contracting employer does not specifically exclude the position(s) through their CalPERS contract.

Service Credit

A CalPERS employee or officer (employed, appointed or elected) earns service credit for service while receiving compensation from his or her employer for service performed during normal working hours. In addition, elected officials who elect to be covered by CalPERS would receive full-time service credit only if he or she is receiving compensation and serves in the elected office.

Additional Retirement Service Credit

In 2003, AB 719 was enacted to allow a state member, school member, or local member, upon the member's contracting agency's election, to be subject to the provision, to be eligible to purchase up to five years of additional retirement service credit in CalPERS. A member making this election would be required to have at least five years of service credit prior to the purchase and would be required to pay the full cost of the purchase.

Proposed Changes

The bill would prohibit a governing body of a city or county from granting, or paying for contributions for, service credit for an elected officer or member of the board of supervisors for time that he or she did not serve in elected office.

Legislative History

- 2003 AB 896 (Diaz) – Would have allowed a contracting agency to provide membership rights to non-school elected officers excluded by existing provision. If elected, the officers could then elect to purchase previously excluded service. Final compensation for benefits for this elective officer service would be limited to pay rates reported during the service. This content was removed from the bill and the bill failed passage. *CalPERS Position: Neutral*
- 1998 Chapter 678 (AB 1166, House) – Clarified the effective date applicable to city and county elected or appointed officials subject to Chapter 378 by inserting the date into the Government Code provision. *CalPERS Position: Sponsor*
- 1996 Chapter 378 (AB 2743, Ackerman) – Prevented persons elected or appointed to a city or county board, commission, or similar legislative or administrative bodies from qualifying for membership. Exempted elected

and appointed officers serving on a city council and a county board of supervisors from this prohibition. *CalPERS Position: Sponsor*

- 1993 Chapter 1297 (SB 53, Russell) - Promoted pension accountability and prevented persons elected or appointed to commissions or similar legislative or administrative bodies which were not part of a city or county from qualifying for membership in CalPERS. *CalPERS Position: Sponsor*
- 1983 Chapter 773 (SB 816, Seymour) – Permitted amortization of employer liability for costs associated with optional service credit purchases; deleted the employer contribution requirement from the elective officer provision. *CalPERS Position: Sponsor*

Issues

1. Arguments by Those in Support

According to the author, “The Board of Supervisors in a California county recently moved to allow an elected official to purchase (or was otherwise gifted) years of service credit in order to retire early. The fundamental problem with this is that this person held an elected office and was not a regular employee. The people of that county vote for this person and their votes permit him to be able to access retirement benefits. The Board of Supervisors should not have the authority to grant another elected official the ability to purchase retirement credit for years that he or she did not serve in elected office. This act defrauds the electorate, and should not be permitted. This legislation makes the change to the law that would prevent such actions from occurring in the future.”

There is no known support at this time.

2. Arguments by Those in Opposition

There is no known opposition at this time.

3. This bill is consistent with CalPERS’ existing treatment of payroll reporting and service credit provisions.

A CalPERS member, whether employed, elected or appointed, is only eligible to receive service credit for services compensated by his or her employer and for services performed during normal working hours. An elected official who no longer holds office would not be eligible to receive service credit for the remaining period of a term when no service was rendered. If a payment was made to an elected or appointed officer in lieu of completing his or her term of office, that payment would not be reportable to CalPERS and no service credit would be granted.

4. This bill will not preclude an elected official from purchasing Additional Retirement Service Credit.

This legislation does not preclude a member from purchasing Additional Retirement Service Credit as provided in the Public Employees' Retirement Law, provided the elected official has at least five years of service credit and makes contributions as specified in the law.

5. Legislative Policy Standards

The Board's Legislative Policy Standards suggest a neutral position on proposals that do not significantly affect the benefit interests of our stakeholders and do not significantly impact CalPERS' benefits or administration of the system. AB 2351 is consistent with our handling of payroll reporting and our service credit provisions, and would not have a significant administrative impact on our system.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans, but it is a part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

Program Costs

AB 2351 would not impact CalPERS' program costs.

Administrative Costs

AB 2351 would not impact CalPERS' administrative costs.

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